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| CLERK US DISTRICT COURT DISTRICT OF NEVADA | |
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Alfred Clark
5613 Harmony Ave.
Las Vegas, NV 89107
in Propria persona

UNITED STATES DISTRICT COURT FOR
THE STATE OF NEVADA

2:23-cv-00493-GMN-BNW

ALFRED CLARK,

Plaintiff,

vs.

US BANK, NATIONAL ASSOCIATION,

WESTERN PROGRESSIVE - NEVADA,
INC.,

PHH MORTGAGE SERVICES

Defendant(s).

) Case No.
) CAUSE OF ACTION
)
) FORECLOSURE
)
) HARASSMENT AND ABUSE
)
) VIOLATION OF 12 USC 2605
)
) Public Law Section 807
) 1692e § 5.5, False and Misleading
) Representations.
)
) Public Law Section 808
) 1692f § 5.6, Unfair Practices
)
) Public Law Section 812
) 1692j § 4.2.6, Furnishing Certain Deceptive
) Forms
)
)
)

**COMPLAINT FORECLOSURE HARASSMENT AND ABUSE
VIOLATION OF 15 U.S.C. § 1692 *et seq.*, PUBLIC LAW 95-109
MEMORANDUM AND POINTS OF AUTHORITY**

INTRODUCTION

Comes now, Alfred Clark, (hereinafter Plaintiff), do depose and say that I am competent to testify and that I have personal, first-hand knowledge of the matters herein, and that I am of the age of majority, and that the contents of this complaint are true and correct to the best of my knowledge.

Defendants in this action:

PHH MORTGAGE SERVICES
P.O. BOX 5452
MT. LAUREL, NJ 08054-5452

1 US BANK, NATIONAL ASSOCIATION
2 25 WALNUT STREET
3 CINCINNATI, OH 45202-3923

4 WESTERN PROGRESSIVE - NEVADA, INC.
5 1000 ABERNATHY ROAD N.E., BLDG. 400
6 SUITE 200
7 ATLANTA, GA 30328

8 Any answers, response, or demurrers to this verified complaint SHALL be verified and
9 submitted under penalty of perjury under the laws of the United States of America pursuant to
10 28 U.S.C. 1746.

11 The land referred to in this matter, herein below is situated in the unincorporated area,
12 County of Clark, State of Nevada, and is described as: APN No: 138-36-110-054. Lot 20, in
13 Block 6, of Charleston Heights Tract No. 31-A, in the City of Las Vegas, County of Clark,
14 State of Nevada, as shown on map filed in Book 6, Page 49 of Maps, in the office of the
15 County Recorder of said County.

16 SUMMARY OF COMPLAINT

17 From on or about 3/13/2009 to the present day, USBank (hereafter USBank) and
18 Ocwen/PHH Mortgage (hereafter PHH), have been harassing Plaintiff with extreme abuse in
19 the form of NOD's and Election to Sell Plaintiff's private property, 5613 Harmony Ave., Las
20 Vegas, NV 89107, starting when National Default Services Corporation as Substitute trustee
21 on behalf of USBank claiming trustee and /PHH claiming servicer, filed a NOD and Election
22 to sell on or about 3/13/2009 using a post New Century bankruptcy alleged assignment,
23 document number 20090313-0004015, along with a limited power of attorney from
24 Countrywide as standing without ever revealing a contract between Plaintiff and Countrywide.

25 However, National Default Services Corporation rescinded the 3/13/2009 NOD and
26 Election to Sell on or about 7/22/2009 after numerous correspondence from Plaintiff revealing
27 USBank nor Ocwen (now known as PHH) have never had a legal nor lawful standing to
28 instruct a NOD or Election to Sell against Plaintiff's private property using the alleged
29 assignment, document number 20090313-0004015, as well as the alleged limited power of
attorney for Countrywide as their proof of standing, post New Century bankruptcy. It appears
National Default Services Corporation adhered to the New Century bankruptcy agreeing with

1 Plaintiff that USBank nor Ocwen never had legal nor lawful standing to initiate a foreclosure
 2 action and are not real parties of interest in property 5613 Harmony Ave., Las Vegas, Nevada
 3 89107. **(National Default Services Corporation is a not a defendant in this Harassment**
 4 **and Abuse Complaint.)**

5 In New Century TRS Holdings, Inc. under the Case No: 07-10416(KJC), the court held as
 6 follows:

7 *“The liquidation plan had become effective on August 1, 2008 (the “effective date”) . . . On the*
 8 *effective date, the liquidating trust was created with Alan M. Jacobs as trustee. . . Also on that*
 9 *date, the Creditors’ Committee was dissolved; the Plan Advisory Committee (the “PAC”) was*
 10 *formed; debtors’ officers and directors ceased serving and were replaced by Jacobs; and*
 11 *debtors assets were distributed to the liquidating trust; and NCFC’s outstanding common and*
 12 *preferred stock, as well as all notes, securities, and indentures, were canceled.”*

13 [emphasis added]

14 In the Rosses case, the court held as follows:

15 | *“3. Validity of the 2011 Assignment*

16 *The Rosses contend that the 2011 assignment transferring the Mortgage from New Century*
 17 *Mortgage to Deutsche Bank is void because New Century Mortgage had been divested of its*
 18 *assets as a result of its 2008 bankruptcy and held no interest in either the Note or Mortgage*
 19 *that it could validly assign to Deutsche Bank in 2011. Compl. ¶¶ 10, 16-17. Deutsche Bank*
 20 *asserts that, at the time of the 2011 assignment, New Century Mortgage was a debtor in*
 21 *possession with the authority and discretion to manage its property and to execute assignments*
 22 *of mortgage. Defs.’ Mem. 6-7, ECF No. 4.*

23 *While it is true that bankruptcy law ordinarily permits a mortgage lender with debtor in*
 24 *possession status to execute and record assignments in the normal course of its business,*
 25 *Juarez v. Select Portfolio Servicing, Inc., No. 11-2431, 2013 WL 500868, at *11 (1st Cir. Feb.*
 26 *12, 2013), the presumption that such transfers are permitted is defeated when a bankruptcy*
 27 *court has confirmed a plan requiring the dissolution of the corporation, the termination of the*
 28 *company’s operations, or the divestiture of its assets. See Juarez v. U.S. Bank Nat. Ass’n ex*
 29 *rel. Holders of the Asset Backed Sec. Corp. Home Equity Loan Trust, 11 Series NC 2005-HE8,*
*No. 11-10318-DJC, 2011 WL 5330465 at *7 (D. Mass. Nov. 4, 2011) (Casper J.), rev’d on*

1 *other grounds sub nom. Juarez, 2013 WL 500868 (observing that the plaintiff did not allege*
2 *any action#--#such as dissolution, cessation of operations, or divestiture#--#prohibiting the*
3 *post-petition assignment of mortgage); New Century Mortg. Corp. v. Braxton, No. 09 MISC*
4 *393485(GHP), 2010 WL 59277, at *6 (Mass. Land Ct. Jan.11, 2010) (noting that lender failed*
5 *to show how it retained the authority to assign mortgage during its bankruptcy proceedings in*
6 *light of the transfer of its assets to a liquidating trust). ”*

7 [emphasis added]

8 Deutsche Bank National Trust Company v. Williams. 11-cv-00632-JMS-RLP (March 29,
9 2012), The court held;

10 “*that Plaintiff has no standing to foreclose because it has not established that it was validly*
11 *assigned the Mortgage and Note. Based on the following, the court agrees that Plaintiff has*
12 *not established its standing to foreclose and therefore GRANTS the Williams’ Motion to*
13 *Dismiss. ”*

14 [emphasis added]

15 Another case directly on point requiring express post-August 1, 2008 approval for
16 assignment from the identical liquidation trustee is New Century Mortgage Corporation v.
17 Braxton, 2010 WL 59277 (Mass.Land.Ct.) (January 11, 2010). In Braxton, where foreclosure
18 plaintiffs attempted to utilize post-August 1, 2008 assignments from bankrupt divested New
19 Century for standing, the court held that plaintiffs had not proved standing as follows:

20 “*Plaintiffs have the additional obstacle of the pending bankruptcy of New Century to*
21 *overcome; essentially they must show not only that the mortgages were transferred from New*
22 *Century to Consumer Solutions REO, but that the transfers took place either before the*
23 *bankruptcy, or with leave of the bankruptcy court or liquidating trustee. The Plaintiffs bear the*
24 *burden of proving their standing. ”*

25 [emphasis added]

26 Several years went by without any correspondence, not even a billing statement, from
27 USBank or Ocwen, now known as PHH until, as it appears, they found Western Progressive
28 (hereafter WP), to do their dirty work since NDSC would no longer participate in there scheme
29 as substitute trustee on behalf of USBank claiming to be trustee and PHH claiming to be
servicer. On or about 11/10/2015, WP filed as substitute trustee beginning the ongoing

1 harassment and abuse in the form of threatening NOD's and Election to Sell Plaintiff's private
 2 property. Defendants also used the United State Postal Service as a utility to help pull off the
 3 scam. Plaintiff enters into this court of record the actual facts that show Defendants named
 4 herein have been harassing, with extreme abuse, using nothing more than (false and misleading
 5 representations), (unfair practice), as well as (furnishing certain deceptive forms). *At all*
 6 *relevant times, each Defendant committed the acts, caused or directed others to commit the*
 7 *acts, or permitted others to commit the acts alleged in this Complaint. Additionally, some or all*
 8 *of the Defendants acted as the agent of the other Defendants, and all of the Defendants acted*
 9 *within the scope of their agency if acting as an agent of the other.*

10 In facilitating the continuing harassment and extreme abuse of Plaintiff with numerous
 11 foreclosure actions as well as threatening sales of Plaintiff's private property, relying upon a
 12 limited power of attorney for the loans New Century serviced for Countrywide, as well as the
 13 creation of an alleged assignment, document number 20090313-0004015, with a signature of
 14 Joyce Nelson as Assistant Secretary for New Century post New Century bankruptcy dated
 15 1/9/2009 from a non-existent board of directors and a corporation without assets, is unlawful
 16 and in violation of FDCPA Public Law Section 807 - 1692e § (5,9,10,13), False and
 17 Misleading Representations, Public Law Section 808 – 1692f § (6)(a), Unfair Practice and
 18 unlawful. On or about 1/9/2009, USBank recorded the alleged assignment in to public record.

19 NDSC filed substitute trustee on or about 3/13/2009

20 NDSC filed Notice of Default and Election to Sell on or about 3/13/2009

21 NDSC Rescinded on or about 7/22/2009

22 Western Progressive filed as Substitute Trustee on or about 11/10/2015

23 Western Progressive filed Notice of Default and Election to Sell on or about 3/21/2016

24 Western Progressive filed Certificate of sale on or about 7/13/2018

25 Western Progressive Rescinded Notice of Default on or about 7/16/2018

26 Western Progressive filed Notice of Default and Election to Sell on or about 8/27/2018

27 Western Progressive Rescinded Certificate of sale on or about 10/29/2018

28 Western Progressive filed Certificate on or about 2/22/2019

29 Western Progressive Rescinded NOD on or about 7/27/2021

Western Progressive filed NOD and Election to Sell on or about 11/21/2021

Western Progressive Recorded Certificate of sale on or about 3-31-2023

1 And is now well within the one year statute of Violation of 12 USC 2605 Public Law Section
 2 8071692e § 5.5, False and Misleading Representations; Public Law Section 808
 3 1692f § 5.6, Unfair Practices; Public Law Section 8121692j § 4.2.6, Furnishing Certain
 4 Deceptive Forms.

5 **HARASSMENT AND ABUSE**

6 **Statement of Facts**

7 The ongoing harassment and abuse from the Defendants named herein using nothing more
 8 than deceptive forms and misrepresentation of documents used to pull off the scam of these
 9 multiple foreclosure actions against Plaintiff has caused Plaintiff to suffer immensely from the
 10 onslaught of the aforementioned harassment and abuse. Plaintiff has suffered the loss of
 11 purchasing power from the intentional filing of false and negative credit from said Defendants
 12 Ocwen/PHH. Defendants, to date, have never legally or lawfully verified the debt they claim
 13 Plaintiff owed, but have continually filed negative credit reports against Plaintiff. See
 14 Daugherty v. Ocwen U.S. District Court case # 5.14-cv-24506, where Defendant Ocwen was
 15 held accountable for false, negative credit reporting.

16 The sleepless nights and the stress from the non-stop onslaught of this harassment and
 17 abuse has caused Plaintiff to be admitted into the hospital on numerous occasions from the
 18 threat and stress of the possibility of losing his home at the hands of common thieves.
 19 Defendants USBank, WP and Ocwen/PHH threaten to take action they legally and/or lawfully
 20 cannot take with full knowledge that the documents used are false and misleading, as well as
 21 deceptive, as USBank was part of the New Century bankruptcy and appears to have full
 22 knowledge of the seizure of New Century's assets by the New Century bankruptcy court,
 23 effective date, August 1, 2008. *(noting that lender failed to show how it retained the authority*
 24 *to assign mortgage during its bankruptcy proceedings in light of the transfer of its assets to a*
 25 *liquidating trust).* "

26 It is a fact that Plaintiff, Alfred Clark, has suffered substantial emotional and monetary
 27 damages as a direct result of the Defendants' willful disregard of the law, And of Plaintiff's
 28 Constitutional Rights, to possess, own and protect his private property. In unlawfully
 29 executing the document number 20090313-0004015, and utilizing the aforementioned
 document to foreclose on Plaintiff's private property, Defendant(s) have violated the

Fair Debt Collection Practices Act, 15 USC § 1692 et seq. Public Law 95-109.

Public Law Section 813 – 1692k § (b)(1), Civil Liability

Theft by harassment and abuse is the act of intentionally depriving someone of his or her property. When these behaviors become repetitive, it is defined as bullying. As Defendants have shown through numerous foreclosure actions using nothing more than False and Misleading documentation) Furnishing Certain Deceptive Forms). False and Misleading Representations;) For these reason, Plaintiff Alfred Clark files this Complaint of Harassment and Abuse, as it is ripe as well as warranted.

Wherefore, Plaintiff moves this court of record to:

1. Declare and deem the “alleged” CORPORATION ASSIGNMENT OF DEED OF TRUST, document number 20090313-0004015, in reference to property address 5613 Harmony Ave., Las Vegas, NV 89107, defective on its face, void and of, NO FORCE

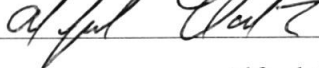
2. Execute or cause to be executed by DEFENDANTS a Notice of Rescission regarding any and all foreclosure related documents having been recorded in the Clark County Recorder’s Office in reference to property address 5613 Harmony Ave., Las Vegas, NV 89107.

**VERIFICATION OF COMPLAINT AND DECLARATION OF
HARASSMENT AND ABUSE**

Subscribed and affirmed, without prejudice, and with all rights reserved, the undersigned, Alfred Clark, Principal, declares under penalty of perjury, under the laws of the United States of America, states as follows: All the facts herein are true, correct of my own personal knowledge.

My Prayer May Justice Prevail

IN WITNESS WHEREOF I hereunto set my hand and seal on this 6
day of April, 2023 and here by certify all the statements
made above are true, correct and complete.

By; 
Alfred Clark, All Rights Reserved

JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

State of Nevada)

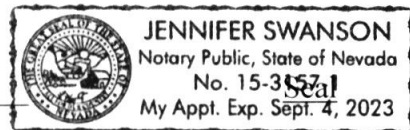
) subscribed and affirmed:

County of Clark)

On this 6 day of April, 2023, before me, the undersigned, a Notary Public in and for State of Nevada, Alfred Clark, personally appeared before me, known to me to be the one whose name is signed on this instrument, and has acknowledged to me that he has executed the same.

Signed: _____

Jennifer Swanson



Printed Name: _____

Jennifer Swanson

Date: _____

04.06.23

My Commission Expires: _____

Sept. 4, 2023